

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

ROBERT MZELL

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

"SEE ATTACHED"

Defendant(s)

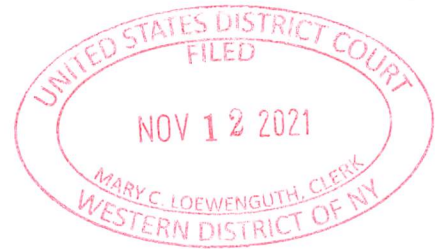
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

20 - CV - 1409

(to be filled in by the Clerk's Office)

AMENDED COMPLAINT

JURY TRIAL: Yes ☒ No ☐

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

(2)

Full List of defendants

- 1) T. GETER, Elmira C.O.
- 2) J.L. HARTMAN, Elmira C.O.
- 3) S. FARNNA, Elmira C.O.
- 4) A. McMASTERS, Elmira C.O.
- 5) J. WALLACE, Elmira C.O.
- 6) T. JOHNSON, Elmira Sergeant
- 7) JOHN DOE,
MEDICAL CARE PROVIDER Assigned to the infirmary
emergency room in Elmira on September 7, 2019
Early afternoon
- 8) JANE DOES,
MEDICAL CARE PROVIDER ASSIGNED TO make
ROUNDS IN Elmira MHU Building FROM
SEPTEMBER 7, 2019 TO SEPTEMBER 13, 2019

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

All other names by which
you have been known:

ID Number

Current Institution

Address

~~XXXXXXXXXX~~ ROBERT MIZELL
14A5395

City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 2

Name

Job or Title (*if known*)

Shield Number

Employer

Address

J.L. HARTMAN
ELMIRA CORRECTIONAL OFFICER
ELMIRA CORRECTIONAL FACILITY
1879 DAVIS ST. BOX 500
ELMIRA N.Y. 14902-0500
City State Zip Code

☒ Individual capacity ☐ Official capacity

Defendant No. 3

Name

Job or Title (*if known*)

Shield Number

Employer

Address

S. FAZYNA
ELMIRA CORRECTIONAL OFFICER
ELMIRA CORRECTIONAL FACILITY
1879 DAVIS ST. BOX 500
ELMIRA N.Y. 14902-0500
City State Zip Code

☒ Individual capacity ☐ Official capacity

(3)

B. DEFENDANTS

DEFENDANT NO. 1

T. GETER

TITLE:

ELMIRA CORRECTIONAL OFFICER

EMPLOYER:

ELMIRA CORRECTIONAL FACILITY

ADDRESS

1879 DAVIS ST.

BOX 500

ELMIRA, NY 14902-0500

☒ INDIVIDUAL CAPACITY

DEFENDANT NO. 4

A. McMASTERS

TITLE :

ELMIRA CORRECTIONAL OFFICER

EMPLOYER:

ELMIRA CORRECTIONAL FACILITY

ADDRESS

1879 DAVIS ST

BOX 500

ELMIRA, NY 14902-0500

☒ INDIVIDUAL CAPACITY

DEFENDANTS

DEFENDANTS NO. 7

MEDICAL CARE PROVIDER "JOHN DOE" WHO
WAS ASSIGNED TO THE ELMIRA INFIRMARY
EMERGENCY ROOM ON SEPTEMBER 7, 2019
EARLY IN THE AFTERNOON

TITLE : ELMIRA MEDICAL CARE PROVIDER

EMPLOYER : ELMIRA CORRECTIONAL FACILITY
ADDRESS 1879 DAVIS ST.
BOX 500
ELMIRA, N.Y. 14902-0500

DEFENDANTS NO. 8.

MEDICAL CARE PROVIDERS ASSIGNED TO
MAKE ROUNDS IN ELMIRA MHU BUILDING
FROM SEPTEMBER 7, 2019 TO SEPTEMBER 13,
2019 "JANE DOES"

TITLES : REGISTERED NURSES

EMPLOYER : ELMIRA CORRECTIONAL FACILITY
ADDRESS 1879 DAVIS ST.
BOX 500
ELMIRA, N.Y. 14902-0500

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

Defendant No. 5

Name

J. WALLACE

Job or Title (if known)

ELMIRA CORRECTIONAL OFFICERS

Shield Number

Employer

ELMIRA CORRECTIONAL FACILITY

Address

1879 DAVIS ST. BOX 500

ELMIRA

City

N.Y.

State

14902-0500

Zip Code



Individual capacity



Official capacity

Defendant No. 6

Name

T. JOHNSON

Job or Title (if known)

ELMIRA CORRECTIONAL OFFICER (SERGEANT)

Shield Number

Employer

ELMIRA CORRECTIONAL FACILITY

Address

1879 DAVIS ST BOX 500

ELMIRA

City

N.Y.

State

14902-0500

Zip Code



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

“SEE ATTACHED”

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

(6)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

"
SEE ATTACHED"

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

"
SEE ATTACHED"

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

"
SEE ATTACHED"

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

"
SEE ATTACHED"

(7)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

C. What date and approximate time did the events giving rise to your claim(s) occur?

"SEE ATTACHED"

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

"SEE ATTACHED"

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

"SEE ATTACHED"

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

"SEE ATTACHED"

(8)

I. Complaint (CAPTION Completed ON PREVIOUS PAGES)

ROBERT MIZELL, Pro Se, for the Complaint State as follows:

II. Parties, Jurisdiction and Venue

- 1) Plaintiff, ROBERT MIZELL was confined in the maximum security facility of Elmira in New York State, located at 1879 DAVIS ST., P.O. BOX 500 Elmira, N.Y. 14902-0500 from May 2019 to September 2019. Plaintiff is currently confined at
Correctional Facility
N.Y.
- 2) Plaintiff, ROBERT MIZELL is and was at all times mentioned herein an adult citizen of the United States and a resident of the State of New York.
- 3) Defendants, T. GETER, J. L. HARTMAN, A. MEMASTERS, J. WALLACE, S. FARXNA, T. JOHNSON and JOHN & JANE DOES, were at all times relevant herein employees of Elmira Correctional Facility.

- 4) This action arises under and is brought Pursuant to 42 U.S.C. Section 1983 to remedy the deprivation, Under Color of ^{STATE} law of rights guaranteed by the Eighth & Fourteenth amendment to the United States Constitution. This Court has Jurisdiction over this action pursuant to 28 U.S.C. sections 1331 and 1343.
- 5) Plaintiff claims for Compensatory & Punitive & injunctive relief are authorized by rule of the Federal Rules of Civil Procedure.
- 6) This cause of action arose in the Western District of New York. Therefore venue is proper under 28 U.S.C. Section 1391(b)

III Prisoner Status / Statement of Claim

- 7) At all times relevant Plaintiff was a convicted Prisoner in the STATE of New York and defendants were "persons" for ~~purposes~~ purposes of 42 U.S.C. Section 1983 and acted under color of law to deprive Plaintiffs of their Constitutional rights as Set forth more fully below.

IV Statement of facts

- 8) On or about September 5th 2019, Plaintiff ROBERT MIZELL was placed in the Residential Crisis treatment Program located in the MHU building of Elmira Correctional Facility after act of self harm which resulted in the application of 17 stitches to his right forearm at an outside hospital.
- 9) When interviewed on September 6th 2019, Plaintiff ROBERT MIZELL by Office of Mental health clinician in the R.C.T.P. expressed his difficulty adjusting to the abrupt discontinuance of the 500 mg thiorazine prescription he had been on for almost 2 years. Plaintiff also articulated his struggle with his sexual identity which also had been causing psychiatric symptoms for him.
- 10) Immediately following the interview on September 6, 2019 Plaintiff became the focal point of unwanted attention by Correctional staff assigned and visiting the 2nd floor of Elmira Correctional facilities MHU building. This was mainly due to his habit of voicing in sexual identity struggles with whoever would listen to him.

- 11) In Elmira Correctional facilities MHU building 2nd floor, the R.C.T.P. staff can not only monitor every patient/prisoners movement in there cells due to cameras they are also aware that their conversations are audible to the patients housed in those strip cells and have made it a habit to taunt and provoke certain patients they dislike to force a discharge from the unit or just instigate a reaction.
- 12) The audibility of R.C.T.P. staffs biased comments concerning Plaintiff, ROBERT MIZELL'S condition and behavior provided for the deterioration further of his already questionable mental stability also considering the fact that some of the comments were homophobic.

First claim

- 13) On or about September 7th 2019 during the distribution of breakfast defendants C.O. T. GEBER and J.L. HARTMAN gave every patient/prisoner in the R.C.T.P. unit a tray but denied Plaintiff's ROBERT MIZELL his breakfast tray without giving a justifiable reason. As they carted away the food cart and exited the R.C.T.P. area they began to blurt homophobic remarks in the 2nd floor hallway of the MHU building. This continued until the distribution of lunch came apparent.

(12)

- 14) On or about September 7th 2019 in Elmira Correctional Facilities R.C.T.P. unit and during the distribution of lunch, plaintiff, ROBERT MIZELL, non violently placed his right forearm out of the feedup hatch upon which time defendants C.D. T. GETER and J.L. HARTMAN used there WOODEN BATONS to maliciously strike plaintiffs right forearm over 20 times gripping the batons with both hands even screaming homophobic remarks as they attacked untill plaintiff retracted his arm back into the cell.
- 15) The use of force was excessive because defendants C.D. T. GETER and J.L. HARTMAN were not in imminent danger and the procedure for a patient who places his arms non violently out of the hatch on a Suicide watch unit is to wheel the large Cell Shield and place it in front of the exposed area untill a Supervisor arrives to decide the next course of action.
- 16) The use of force was discriminatory because defendants C.D. T. GETER and J.L. HARTMAN demonstrated selective treatment with plaintiff compared with the other Patient/prisoners who had been exhibiting similar behavior but were not subjected to a deviation of proper policy and procedure.

The Use of force was also discriminatory because of the Malicious manner in which both defendants engaged in the attack, gripping both hands on there batons, swinging them like baseball bats and blatantly blurring homophobic remarks as they beat plaintiffs arm which both REVEALED there motive for selectively treating him and demonstrated there intent to injure him.

17) As a result of this excessive use of force by defendants C.D. T. GETER and J.L. HARTMAN, Plaintiff ROBERT MIZELL was deprived of his 8TH Amendment right to be free from cruel and unusual punishment and his 14TH amendment right to be free from discrimination as a mentally ill and homosexual prisoner.

18) The injuries plaintiff sustained were a severely comminuted fracture of his right forearm's distal ulna and Mental pain and suffering.

19) Plaintiff is requesting Compensatory and punitive relief in the amount of \$250,000.

SECOND CLAIM

20) Immediately After the use of force occurred on

September 7TH 2019 an area Sergeant arrived to ~~admonish~~ endorse the misbehavior report that the defendants T. GETER & J.L. HARTMAN fabricated to cover up these actions. The area Sergeant also asked plaintiff, Robert Mirell If he needed medical attention upon which time he complied with the handcuff procedures and was escorted to the Elmira Correctional Facilities infirmary building.

- 21) Registered nurse "JOHN DOE" who was assigned to the Elmira C.F. infirmary Emergency room on Saturday September 7TH 2019 at or around the afternoon refused to sign off on an order to conduct an x-ray exam despite the fact that the area where the plaintiff's arm was broken was swollen the size of a baseball and Plaintiff could only be handcuffed from the front due to extreme pain.
- 22) Upon information and belief, the defendant "JOHN DOE" also neglected to document the extent of plaintiff's injury so there could be a follow up appointment with the physician of the facilities who normally would have returned to work the following Monday morning.
- 23) After being sent back to his cell and for the remaining 5 days spent in Elmira Correctional Facility until plaintiff's transfer on September 13TH 2019 his injury was neglected by every "JANE DOE" Registered nurse who all happen to be female despite the

Fact that he could not be handcuffed from the back because the pain was so extreme and the area where his arm was broken was abnormally swollen.

24) Registered nurse "JOHN DOE" and "JANE DOES" were deliberately indifferent to plaintiff's medical needs because they were aware of his injury due to him complaining to them during their distribution of medical medication which is twice a day. The abnormally swollen nature of plaintiff's arm should have raised red flags to professionally certified medical care providers, but they neglected to follow up on my complaints.

25) As a result of Registered nurses "JOHN & JANE DOES" deliberate indifference to plaintiff complaints and the obvious swollen nature of his arm, plaintiff suffered a severely comminuted fracture of the distal ulna in his right arm which was not treated for until his transfer to Macy Correctional Facility a month later. For a month plaintiff remained with a fractured right forearm and every movement while awake or asleep brought pain to him. When finally seen by a doctor he was told that a metal rod would have to be inserted due to the degree of the ~~bone~~^{bone} separation.

26) Plaintiff was consequently deprived of his 8th Amendment right to be free from cruel and unusual punishment as a result of this deliberate indifference perpetrated by

JOHN & JANE DOES Medical care providers.

27) Plaintiff is requesting Compensatory and punitive relief in the amount of \$250,000

THIRD CLAIM

28) For around 5 days, from September 7TH 2019 to September 12TH 2019, Plaintiff, ROBERT MIZELL, Coupled with his broken right arm and the continual deterioration of his mental condition, became the victim of harassment by R.C.T.P. STAFF who knowing that there verbal bashing was audible to him would say that he was "faking" his injury and make homophobic remarks about him while he was suffering in his cell.

29) On or about September 12TH 2019, Plaintiff, ROBERT MIZELL, who had been demonstrating behavior similar to psychosis and mania threw an unknown substance on both the OMH (Office of Mental Health) nurse and her C.O. escort during the distribution of psychiatric medication late in the afternoon on the 2nd floor of Elmira C.F.'s MHU R.C.T.P. area.

30) After Plaintiff, ROBERT MIZELL, threw on the R.C.T.P. Staff through the feedup hatch, the hatch was immediately closed and Plaintiff retracted his arm back into the cell as order was restored by C.O. S. FAENZA.

- 31) Ten minutes after the throwing and the restoration of order, defendant S. FARXNA appeared in front of the #4 cell R.C.T.P. Area and blatantly told Plaintiff, ROBERT MIZELL, that they were going to "fuck" him up.
- 32) Ten minutes after defendant S. FARXNA threatened Plaintiff, ROBERT MIZELL, and while Plaintiff was sitting idly in his cell, defendant S. FARXNA crept down the back of the R.C.T.P. ^{area} where the ^{cells} bars are not protected by a shield and sprayed Plaintiff an excessive amount of times with D.C. department issued pepper spray.
- 33) Approximately 30 minutes had passed after defendant S. FARXNA ~~had~~ threatened and sprayed Plaintiff ROBERT MIZELL, when defendant Sergeant T. JOHNSON appeared at Plaintiff's Cell and asked him if he wanted to go to the infirmary so he could receive medical attention for his broken arm, upon which time ~~the~~ Plaintiff complied with the handcuff procedures and was escorted out of the R.C.T.P. area by defendants A. McMASTERS and J. WALLACE supervised by SERGEANT T. JOHNSON.
- 34) Immediately after exiting the R.C.T.P. area and entering

the hallway's 2nd floor MHI building, Correctional officers A. McMASTERS and J. WALLACE proceeded to strike plaintiff, ROBERT MIZELL with closed fist blows to the face and body all while plaintiff was handcuffed.

35) Defendants continued to strike plaintiff with closed fist blows as they made their way to the staircase of the 2nd floor of the MHI building, defendants C.O. A. McMASTERS and J. WALLACE then proceeded to kick plaintiff who was on the floor already down the 2 flights of stairs.

36) As Plaintiff rolled down several steps at a time Defendants A. McMASTERS and J. WALLACE continued to kick him until his face hit one of the bottom steps and broke his left front tooth instantly.

37) Supervised the entire time by Sergeant T. JOHNSON, C.O. A. McMASTERS and J. WALLACE, plaintiff was escorted, handcuffed the entire time, to the Elmira C.F. infirmary where the supervising Sgt T. JOHNSON ordered both officers to ~~open~~ rip out the sutures in plaintiff's broken right forearm, upon which time both officers followed their supervisors orders.

- 38) Immediately after this excessive use of force, Plaintiff was then escorted back to the R.C.T.P. area and the next day on September 13, 2019 transferred to MARCY Correctional facilities R.M.H.U. (Residential crisis treatment unit).
- 39) The use of force & its entirety was excessive because Plaintiff posed no imminent threat to officers S. FARXNA, A. McMASTERS & J. WALLACE nor was a restoration of order required as Plaintiff was non violently sitting in his cell when S. FARXNA administered an excessive amount of O.C. spray and Plaintiff was handcuffed the entire time he was beaten maliciously and kicked down two flights of stairs by officers A. McMASTERS & J. WALLACE supervised by Sgt F. JOHNSON.
- 40) The use of force was also discriminatory because defendants S. FARXNA, A. McMASTER, J. WALLACE, and SGT T. JOHNSON deviated from proper policy and procedure in there handling of plaintiffs unhygienic act and demonstrated a blatant, malicious act of retaliation. Defendants gave Plaintiff selective treatment because they did not behave in a professional manner in there dealing with Plaintiff as opposed the other patient/prisoners who had also been committing the same acts in the R.C.T.P.
- 41) As a result of this excessive use of force Plaintiff was deprived of his 8TH Amendment right to be free from cruel & unusual punishment. Also Plaintiff was deprived of his 14TH Amendment right to be ~~Equally~~ protected from discrimination as a mentally ill homosexual prisoner.

42) The injuries sustained from this excessive use of force was a missing tooth the front left tooth which although some might view as cosmetic may have caused more pain and suffering than the broken arm as ~~IP~~ ~~IP~~ to look in the mirror every day and be reminded of ~~this~~ incident has created Post-traumatic stress that cannot be treated with psychiatric care.

43) Plaintiff is requesting Compensatory and punitive relief in the amount of \$250,000.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

~~ELMIRA CORRECTIONAL FACILITY~~ ELMIRA CORRECTIONAL FACILITY

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

Excessive force, Deliberate Indifference, Discrimination

(22)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☒ Yes

☐ No

E. If you did file a grievance:

1. Where did you file the grievance?

MARCY CORRECTIONAL FACILITY

2. What did you claim in your grievance?

2 Excessive force, DELIBERATE INDIFFERENCE, DISCRIMINATION

3. What was the result, if any?

DID NOT RECEIVE GRIEVANCE #

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

FILED COMPLAINT WITH OFFICE OF SPECIAL INVESTIGATION
AND NOTICE OF INTENT WITH THE ATTORNEY GENERAL

(23)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

I INFORMED OSI (OFFICE OF SPECIAL INVESTIGATIONS) &
~~THE~~ ATTORNEY GENERAL

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

"SEE ATTACHED"

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

- ☐ Yes
☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

(24)

VII EXHAUSTION OF REMEDIES

G. Additional information relevant to exhaustion of remedies

1) Plaintiff was estopped from filing grievance by the following Circumstances:

A.) The second excessive use of force was an act of retaliation and a demonstration of intimidation and machination also the abrupt transfer the day after to another facility constitutes affirmative action taken by state to prevent plaintiff from exhausting remedies

B) Plaintiff was misinformed unintentionally of the grievance process in the event of abrupt transfers to other facility by officer and absence of instruction of these circumstances in the MARCY BWHU rule book as well as the facility rule book constitutes misrepresentation therefore estoppel

C) Plaintiff was placed on a fictitious draft on ~~October 18th~~ ^{October 18th} to October 22nd 2019 after he filed grievance twice (1) to Elmira C.F. via MAIL (2) to TIGRC in MARCY C.F. and was denied a

(25)

Grievance # both times but did not receive a response for the grievances until after the Petition draft was canceled. The response was dated for untimely.

2) Plaintiff took every other avenue to exhaust his administrative remedies including filing a notice of intent with the attorney general and filing a complaint with the Office of special investigations.

3) PLEASE SEE EXHIBITS A → D

A) DRAFT CANCELED TO FIVE POINTS ON 10-22-19

B) NOTICE OF INTENT TO ATTORNEY GENERAL

C) CERTIFIED MAIL TO ATTORNEY GENERAL

D) CERTIFIED MAIL TO ATTORNEY GENERAL

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

(27)

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

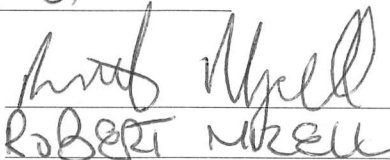
11-8-21

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address



14A5395

GREAT MEADOW C.F. P.O. BOX 51
COMSTOCK

City

N.Y.

State

12121-0051

Zip Code

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Print

Save As...

Add Attachment

Page 10 of 11

Reset

(28)

Verification

STATE OF NEW YORK

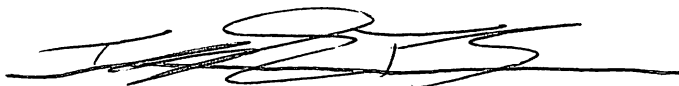
SS.:

COUNTY OF WASHINGTON

ROBERT MIZELL being duly Sworn, states that he is the plaintiff in this action and that the foregoing Complaint is true to his own knowledge, except as to matters therein stated to be allowed on information and belief and as to those matters he believes it to be true.

Sworn to before me this 8th
day of November, 2021


Signature



NOTARY PUBLIC
Notary Public in the State of New York
No. 01TR6390350
Qualified in Washington County
My Commission Expires on April 15, 2023

(29)

410 Med CNYPC (4/10)

Patient Name: Mozell, RobertC#: 301382

TRANSACTION		FACILITY NAME or PROGRAM TRANSFER		MENTAL HEALTH	SINGLE CELL HOUSING REQUIRED
Date:	Type:	From:	To:	LEVEL # and ** S Designation	Y/N
10/12/18	A	Clinton RCTP	Clinton ICP	1S	
11/24/18	A	Clinton ICP	Clinton RCTP	1S	
11/26/18	A	Clinton RCTP	Clinton RCTP	1S	
2/13/19	A	Clinton ICP	Clinton RCTP	1S	
2/14/19	A	Clinton RCTP	Clinton ICP	1S	
4/8/19	A	Clinton ICP	Clinton RCTP	1S	
4/9/19	A	Clinton RCTP	Clinton ICP	1S	
5/6/19	PRG	Clinton ICP	Elmira GP	1S	
6/14/19	PRG	Elmira GP	Elmira RCTP	1SV	
7/1/19	PRG	Elmira RCTP	Elmira OBS	1SV	
7/1/19	PRG	Elmira OBS	Elmira TRICP	1SV	
9/5/19	PRG	Elmira TRICP	Elmira RCTP	1SV	
9/13/19	A	Elmira RCTP	Elmira RCTP	1SV	
9/20/19	A	MCF RCTP	MCF RCTP	1SV	
9/20/19	A	MCF RCTP	MCF RCTP	1SV	
10/1/19	A	MCF RCTP	MCF RCTP	1SV	
10/22/19	A	MCF RCTP	Fire Point	1SV	can whd
10/29/19	A	MCF RCTP	MCF RCTP	1SV	
10/30/19	A	MCF RCTP	MCF RCTP	1SV	
11/23/19	A	MCF RCTP	MCF RCTP	1SV	
12/5/19	A	MCF RCTP	MCF RCTP	1SV	
12/5/19	A	MCF RCTP	MCF RCTP	1SV	
12/9/19	A	MCF RCTP	MCF RCTP	1SV	

NOTE: THIS REPORT IS STRICTLY
CONFIDENTIAL AND IS FOR THE
INFORMATION ONLY OF THE PERSON
AGENCY TO WHOM IT IS ADDRESSED.
NO RESPONSIBILITY CAN BE ACCEPTED
BY CENTRAL NEW YORK PSYCHIATRIC
CENTER IF IT IS MADE AVAILABLE
TO ANY OTHER PERSON, INCLUDING THE
PATIENT. DESTRUCTION OF THIS MATERIAL
IS REQUIRED AFTER STATED USE.

*ADM = Admission I = Inactive Transfer DSC = Discharge SCR = Screening A = Active Transfer
AS = Active Screening PRG = Program Transfer LC = Level Change OTC = Out to Court Transfer
SHU = Transfer into or out of SHU housing **S = Serious Mental Illness Designation

OMH-PHI

EXHIBIT A (30)

STATE OF NEW YORK COURT OF CLAIMS

ROBERT MIRELL,

-against-

THE STATE OF NEW YORK

NOTICE OF
INTENTION TO
FILE CLAIM

TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK:

PLEASE TAKE NOTICE, that the undersigned Robert Mirell intends to file a claim against the State of New York, pursuant to Sections 10 and 11 of the Court of Claims Act.

The Post office address of the claimant herein is:

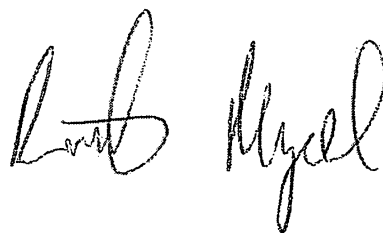
Marcel Correctional Facility

P.O. Box 3600

Marcy, N.Y. 13403-3600

For the time being I am representing myself.

The time when and the place where such claim arose and the nature of the same are as follows: ON 9-7-19 and 9-11-19 in the R.C.T.P. area of the Elmira C.F. Claimant was the victim of two assaults which resulted in a broken arm and a broken left front tooth. The assaults were perpetrated by the Correctional officers intentionally. Furthermore claimant was denied medical treatment for his arm for nearly 30 days which exacerbated arm fracture and resulted in the insertion of a medical CAST.



CLAIMANT



EXHIBIT B (31)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9-18-20
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

[Signature]

Signature(s) of Plaintiff(s)

VERIFICATION

STATE OF NEW YORK
SS.

COUNTY OF WYOMING

ROBERT MIZEK being duly sworn, states that he is the plaintiff in this action and that the foregoing complaint is true to his own knowledge, except as to matters therein stated to be allowed on information and belief and as to those matters he believes it to be true.

[Signature]

SWORN TO BEFORE ME THIS 20TH
DAY OF September, 2020

NOTARY PUBLIC

ZACHARY NEVIDOMSKY
Notary Public, State of New York
No. 01NE6347915
Qualified in Cayuga County
Commission Expires September 19, 2020

2024



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>ATTORNEY GENERAL (N.Y.S.) DEPARTMENT OF LAW CAPITOL BUILDING ALBANY, NEW YORK 12244</p> <p>9590 9402 5101 9092 6376 45</p>		<p>A. Signature</p> <p><input checked="" type="checkbox"/> Agent</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>NOV 08 2019</p> <p>NYS DEPT OF LAW ADMINISTRATIVE SERVICES</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7019 0160 0000 7375 9278</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Priority Mail Express</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail (over \$500)</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Signature Restricted Delivery</p>	



EXHIBIT C (32)

USPS TRACKING #



9590 9402 5101 9092 6376 45

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box.

ROBERT MIZELL RAS3895
MARCY CORRECTIONAL FACILITY
P.O. BOX 3600
MARCY, NY, 13403-3600



U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

NOV 6 2019

Postmark
SPRINGFIELD
MA 01104

Certified Mail Fee \$ 3.50

Extra Services & Fees (check box, add fee in dollars and cents)

<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ <u>2.80</u>
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage \$ 1.50

Total Postage and Fees \$ 6.80

Sent To ATTORNEY GENERAL (N.Y.S.)

Street and Apt. No. or PO Box No. DEPARTMENT OF LAW CAPITAL BUILD

City, State, Zip+4 ALBANY NEW YORK 12224

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

9226 5262 0000 0910 6102

77

EXHIBIT D (33)

Central New York Psychiatric Center Corrections-Based Operations		Patient's Name (Last, First, M.I.) Mizell, Robert	
Chronological Record		"C" No. 361382	DOB: 3/8/86
		DIN#: 14A5395	Unit: 719
CR Date: 9/4/29	ME Date: 5/5/32	Parole Eligibility Date: 2/19/29	
Offenses: Kidnapping 2nd Rob 1st, CPW 2nd		Sentence: 15-18 years	

TRANSACTION Date:	*Type:	FACILITY NAME or PROGRAM TRANSFER From:	To:	MENTAL HEALTH LEVEL # and ** S Designation	SINGLE CELL HOUSING REQUIRED Y/N
12/19/14	ADM	Westchester	DCF	1	N
12/23/14	PRG	DCF GP	DCF FDU	1	N
	PRG	DCF FDU	DCF GP	1	N
	LC	-	DCF GP	1S	N
	A	DCF	Attica	1S	
	A	Attica GP	Attica RCTP	1S	
	A	Attica RCTP	CNYPC	1S	
	ADM	CNYPC	GMCT RCTP	1S	
	PRG	GMCT RCTP	GM GP	1S	
	PRG	GMCT RCTP	GMCT RCTP	1S	
12/1/15	PRG	GMCT RCTP	GMCT RCTP	1S	
12/11/15	PRG	GMCT RCTP	GMCT RCTP	1S	
12/22/15	PRG	GMCT RCTP	GMCT RCTP	1S	
2/12/16	PRG	GMCT RCTP	GMCT RCTP	1S	
2/16/16	PRG	GMCT RCTP	GMCT RCTP	1S	
3/20/16	PRG	GMCT RCTP	GMCT RCTP	1S	
3/21/16	PRG	GMCT RCTP	GMCT RCTP	1S	
4/10/16	PRG	GMCT RCTP	GMCT RCTP	1S	

NOTE: THIS REPORT IS STRICTLY
CONFIDENTIAL AND IS FOR THE
INFORMATION ONLY OF THE PERSON
AGENCY TO WHOM IT IS ADDRESSED.
NO RESPONSIBILITY CAN BE ACCEPTED
BY CENTRAL NEW YORK PSYCHIATRIC
CENTER IF IT IS MADE AVAILABLE
TO ANY OTHER PERSON, INCLUDING THE
PATIENT. DESTRUCTION OF THIS MATERIAL
IS REQUIRED AFTER STATED USE.

Form 410 MED CNYPC (4/10)

*ADM = Admission I = Inactive Transfer DSC = Discharge SCR = Screening A = Active Transfer
 AS = Active Screening PRG = Program Transfer LC = Level Change OTC = Out to Court Transfer
 SHU = Transfer into or out of SHU housing **S = Serious Mental Illness Designation

OMH-PHI



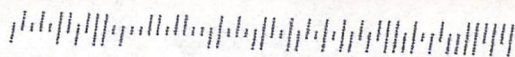
ROBERT MUELL #145395

GREAT MEADOW CORRECTIONAL FACILITY
BOX 51

CONISTOTA, N.Y. 12821-0051



CLERK,
UNITED STATES
BUFFALO, N.Y.



LEGAL MAIL

CASE
20-C

Great Meadow

NEOPOST

FIRST-CLASS MAIL



Correctional Facility

11/09/2021

US POSTAGE

\$002.16⁰⁰



ZIP 12821
041M11283103

U.S. DISTRICT COURT
JES COURTHOUSE
V. 14202-3350

Nb.

V-1409